

WILFRED PLOMIS

IBLA 78-201

Decided May 3, 1978

Appeal from decision of Eastern States Office, Bureau of Land Management, dismissing protest against annual rental charged for noncompetitive oil and gas lease ES-16399.

Affirmed.

1. Contests and Protests: Generally -- Oil and Gas Leases: Rentals -- Res Judicata -- Rules of Practice: Appeals: Failure to Appeal

When BLM adjudicates issue and offeror does not appeal, doctrine of administrative finality, which is administrative counterpart of res judicata, generally bars consideration of new appeal arising from later proceeding involving same lease and same issue. Accordingly, BLM acted properly in dismissing appellant's protest, filed November 18, 1977, against oil and gas lease annual rental adjudicated on July 27, 1977.

APPEARANCES: Wilfred Plomis, Washington, D.C., pro se.

OPINION BY ADMINISTRATIVE JUDGE FISHMAN

Wilfred Plomis appeals from a December 29, 1977, decision of the Eastern States Office, Bureau of Land Management (BLM), dismissing his protest against the annual rental charged for noncompetitive oil and gas lease ES-16399.

Appellant filed his offer on August 2, 1976. On July 27, 1977, the Eastern States Office issued a decision requiring in part that appellant submit additional rental in the amount of \$270. The additional sum was demanded because of the intervening amendments

to 43 CFR 3130.2-1, 1/ 41 FR 43149 (Sept. 30, 1976), and to 43 CFR 3103.3-2, 42 FR 1032 (Jan. 5, 1977).

Appellant responded to the July 27 decision by filing this statement on July 29: "In accordance with decision dated 7/27/77 there is herewith seven executed stipulations as required. The additional rental, as required, was heretofore paid by check #1494 in the amount of \$290.00. Since it was overpaid would you please refund the excess \$20.00 when issuing the lease. Thank you." Appellant took no action to appeal any point in the July 27 decision within the time limit prescribed in 43 CFR 4.411. On October 17, 1977, the BLM issued appellant a lease effective November 1, 1977.

Then, on November 18, 1977, appellant filed with the Eastern States Office a document which he captioned "PROTEST." Appellant therein said:

Please accept this as a protest of the rental charged and paid for issuance of the above lease. * * *

* * * * *

This protest was not made at the time of payment because on-going activity in the area necessitated immediate issuance, however, it is now requested that the change in the regulations, as recently promulgated, be overturned to reflect payment in accordance with US mineral ownership and the excess rental be refunded.

[1] When appellant failed to appeal the July 27, 1977, BLM decision within the 30-day limit prescribed in 43 CFR 4.411, the decision on the annual rental charge became final. Appellant's protest disputes for the first time the identical issue adjudicated in the July 27 decision. When a final departmental adjudication has been made, the doctrine of administrative finality, which is the administrative counterpart of the principle of res judicata, generally bars consideration of a new appeal arising from a later proceeding involving the same lease and the same issue. See David Loring Gamble, 26 IBLA 249 (1976); Ben Cohen, 21 IBLA 330 (1975). Accordingly, the Eastern States Office acted properly in dismissing appellant's protest.

1/ This section now reads:

"§ 3130.2-1 Rental.

"Rental shall not be prorated for any lands in which the United States owns an undivided fractional interest but shall be payable at the same rate as provided in Subpart 3103 of this chapter for the full acreage in such lands."

The fact that the Eastern States Office issued a decision pursuant to the November 18, 1977, "protest" is without effect. As we said in Roy Jones, 10 IBLA 112, 114 (1973): "The Bureau could not transform a decision which had become final into an appealable decision by gratuitously providing a right of appeal from that decision. This would extend the time for filing a notice of appeal in direct contravention to the rules of practice applicable then."

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Frederick Fishman
Administrative Judge

We concur:

Edward W. Stuebing
Administrative Judge

Douglas E. Henriques
Administrative Judge

